



HARRY HUGHES  
Governor



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September 9, 1986

TO:           Depository Librarians  
FROM:        SPDDP  
SUBJECT:     Governor's Commission to Study Worker's Compensation Laws -  
              Chairman's Message

You will find enclosed two items:

Transcript of Proceedings, January 29, 1986 for the Commission  
Chairman's Message, January 29, 1986.

The Transcript of Proceedings is **officially** the Commission's publication, but the Chairman's Message was not accepted by the Commission as their report. If you peruse the transcript you will see the "heat" of the debate. This Commission was disbanded by the Governor due to their inability to produce a final report on which all could agree. The Governor later named a new commission to complete the task, namely, The Governor's Commission to Study the Workers' Compensation System.

I would suggest entering the transcript as the document with the Chairman's message as an appendix, but not as the Commission's final report.

GOVERNOR'S COMMISSION  
ON  
WORKMEN'S COMPENSATION LAWS

TRANSCRIPT OF PROCEEDINGS

January 29, 1986  
2:15 p.m. - 3:45 p.m.  
501 St. Paul Place  
Baltimore, Maryland 21202

\* \* \* \* \*

COMMISSIONERS PRESENT:

DR. FREDRIC ABRAMSON, Chairman  
FREDERICK L. DEWBERRY, Vice Chairman  
HERBERT J. ARNOLD  
A. THOMAS BECKMAN  
JOSEPH B. HARLAN  
JOHN S. HEBB, III  
DR. RUDOLPH P. LAMONE  
DOUGLAS MACNAB  
VINCENT C. RAYMOND  
DIANA K. VINCENT

ALSO PRESENT:

S. WOODS BENNETT  
NEIL BRIGGS  
JAY L. CHERRY  
CHARLES COAKLEY  
FRED CHURCHMAN  
GROVER CZECH  
GEORGE FELLOWS  
JOEL H. GARRETT  
GERALD F. GOUGH  
DAVID M. HARRY  
GENE HIGGINS

MICHAEL LOVENDUSKY  
BRYSON F. POPHAM  
JOANN PORTER  
ROBERT RANKIN  
STEPHEN ROSENBAUM  
DAVID RULE  
ROBERT SWETNAM  
JOYCE K. TAPPER  
LAWRENCE M. VINCENT  
JOHN WHARTON  
ROBERT G. WILLIAMS

REPORTED BY:

Minnie L. Godsey  
Department of Licensing & Regulation

## PROCEEDINGS

MR. CHAIRMAN: We bring the meeting to order. This is January 29th, the Governor's Commission on Workmen's Compensation Laws. Today we are going to set the 1986 agenda for the Commission and then turn our attention to items placed on the agenda for today, namely the hours vs. wages, using as a shorthand the scripter for changes in the reporting for workmen's compensation insurance. First, is there a motion to approve the transcript of the November 21st meeting?

MS. VINCENT: So moved, Mr. Chairman.

MR. RAYMOND: Second.

MR. CHAIRMAN: So moved and seconded. Any additions or corrections? Okay, all in favor? Unanimous.

Secondly, in order to maintain some kind of orderly schedule, please note that we will be meeting on the third Monday, fourth Monday, rather, sorry, of the month on a regular basis. I'll read you the dates: February 24th in Annapolis, March 24th in Annapolis, April 21st in Baltimore City, May 19th in Baltimore City, June 23rd in Baltimore City. In addition, we will schedule additional meetings on the second Monday of the month in order to keep up with our business, and therefore we will be meeting on the second Monday of February, which is February 10th, I believe. That will be in Annapolis. Those meetings will be from 2 to 4 as scheduled.

Next, I'd like to announce in response to the three public hearings that we held last fall, the appointment of Mr. David Rolling of Montgomery Mutual Insurance as a special

advisor to the Chairman on insurance matters. It was noted in our meetings that the insurance, that the Commission has no standing expertise on insurance per se and the conduct of how insurance companies do their business. In order to provide us that expertise and access to that knowledge, Mr. Rolling has consented to help us in that respect. He is experienced in the insurance industry as President of Montgomery Mutual, he has conducted the insurance business in many states including Maryland, and in addition, served as a member of the Missouri General Assembly, so he is familiar with the legislative processes. I think, therefore, we can draw on his expertise to resolve questions that we may have.

Next, I would like to discuss and raise the agenda for the coming year, to highlight several issues of critical importance which the Commission has dealt with, discussed in various forms.

A copy of the Chairman's Message is attached and incorporated herein, with the following insertion on page 10:

I would add that on March 7, 1983, Chairman Krysiak, in a letter to Secretary Stettler of the Department of Budget and Fiscal Planning, indicated that he would, on a periodic basis, come to the Governor's Commission on Workmen's Compensation Laws to report on the Commission's progress regarding the recommendations made by Budget and Fiscal Planning in a management analysis done three years ago.

MR. BECKMAN: Mr. Chairman.

MR. CHAIRMAN: Mr. Beckman.

MR. BECKMAN: I don't know when your report was prepared. It was a surprise to me. I was not consulted with regard to the conclusions and opinions contained in your report. I would like to state that portions of your report do not speak for me. I disagree with portions of your conclusions. It doesn't reflect, in my opinion, testimony that I've heard throughout the past year, and therefore I must take exception to portions of your report.

MR. CHAIRMAN: So noted, Mr. Beckman.

MR. ARNOLD: Mr. Chairman.

MR. CHAIRMAN: Mr. Arnold.

MR. ARNOLD: I take it that this so-called introductory statement or report which you made for the record at this meeting today is your individual introductory statement. Taken as a whole in its entirety it's your individual statement. Is that correct?

MR. CHAIRMAN: Mr. Arnold....

MR. ARNOLD: Is it reflective of anything else other than your individual statements?

MR. CHAIRMAN: The report you heard reflects the accumulated information which this Commission has dealt with over the past four years, and the three years since I have been on the Commission, and incorporates recommendations made from several quarters, and sets an agenda for this Commission, for us to deal with based on them.

MR. ARNOLD: When was it adopted by this Commission?

MR. CHAIRMAN: I am putting it before you now to be adopted.

MR. ARNOLD: Prior to this, when was it adopted?

MR. CHAIRMAN: As I said, the specific elements of this report emerged in previous Commission hearings and activities, and I have gone through the materials and put together what I considered to be the 1986 agenda, given the mandate of the executive order to reduce the cost of worker's compensation and ensure an increase in benefits to the injured worker. That is the context of the report, and that is the context in which it is offered.

MR. ARNOLD: I perceive your report as an individual report given by you. I disavow it. I do not intend to have my name affected with it, or associated with it in any way. I want you to understand that, I want the record to so show it. And I adopt Mr. Beckman's comments and remarks and second them very wholeheartedly.

MR. HARLAN: Mr. Chairman.

MR. CHAIRMAN: Mr. Harlan.

MR. HARLAN: Do I understand that these are recommendations, these five things that you put out are recommendations of the Chairman for consideration of this group, or are these mandates, or what are they?

MR. CHAIRMAN: These are recommendations which the Chairman has identified from previous Commission activities.

MR. HARLAN: Are these...let me interrupt you.

MR. CHAIRMAN: The Chairman is putting forth for

consideration today, to adopt in the context of Mr. Raymond's astute and accurate observation at our last session, that the Workmen's Compensation Commission, the Study Commission on Workmen's Compensation Laws, tends to continue to rediscuss things rather than reach resolution. And in accordance with that expression, and in accordance with the sentiments of that expression, these are issues which the Chairman believes were discussed to a point worthy of resolution today.

MR. HARLAN: Well if that's the case, then I would move that these recommendations that you have made as Chairman to this Commission for their consideration be put on the floor of this Commission for consideration, either accepting, changing, denying or whatever, by the individual members of this Commission, now.

MR. LAMONE: I second that motion.

MR. CHAIRMAN: All right, the motion moved and seconded. There is a motion on the floor to place the five recommendations before the Commission now for adoption or not. What is....

MR. BECKMAN: Point of order.

MR. CHAIRMAN: Mr. Beckman.

MR. BECKMAN: You know this is, as I indicated before, Mr. Chairman, this is the first time I've ever heard of any of these recommendations, the first time I heard you were going to give a report containing these items. There has been no discussion on this matter. These are apparently purely your ideas and I thought it was inappropriate at this point for you to make a speech and give some recommendations which clearly have

not been discussed with many members of this Commission, and ask for a vote on it.

MR. CHAIRMAN: Mr. Beckman, what is your point of order? There is a motion on the floor.

MR. BECKMAN: I think the motion is out of order. There's been no discussion. I think it's inappropriate when this thing was brought for the first time today, to have a vote on it.

MR. (?): I think you owe a duty, Mr. Abramson, to the members of your Commission, to discuss with them things that you intend to put on an agenda to have a vote on, and you haven't fulfilled that duty, sir.

MR. CHAIRMAN: Mr. Harlan's motion is precisely to put this before you today for discussion so that your sentiments regarding these issues can be known. The motion has been made and seconded. If there is no discussion on the motion, we could call the question.

MR. ARNOLD: There is discussion on the motion. Your motion is out of order. You're not in a position to offer such a motion today. That report that you gave, I assume, was your Chairman's Report, is that correct?

MR. CHAIRMAN: That's correct.

MR. ARNOLD: There's nothing was furnished to any member of this committee prior to this meeting today concerning what was in that report. That report in my mind represents your personal views, Dr. Abramson, does not represent the views of the majority of this Commission. There are two members of this Commission who are not here today, Delegate David Bird and



Senator Irby, who if you're going to take -- and Mr. Porth is not here, and if you're going to take up what you perceive to be the work of this Commission for this current year, it seems to me it should be representative of the entire Commission in its entirety. That prior to any meeting, you should have informed each and every member of this committee, or this Commission, exactly the substance of what your recommendations would be, in order that we could possibly sit down and discuss them and be well informed on them. I think your motion is totally out of order, particularly for a committee of this type and a commission of this type. It is not representative of the way that this Commission has been run since I've been on it, and since you've been Chairman previously. And I'm very surprised at you that you have this type of thing out. You've got discussion on this thing. I want to be heard. I mean there are derogatory statements in that statement concerning members of my profession which I resent, and I resent it terribly. The medical profession, who are not represented here at all, and I think there are conclusions that you have drawn which are erroneous, ill-timed, and not warranted. Yes, sir.

MR. HARLAN: I'm not here to respond to you, I am just talking for the record. I don't share the views of all these either and the reason I put this out is because from what I heard everybody said that they -- that these were -- from what I understood, correct me if I'm wrong, these are recommendations for things to discuss, and I frankly was not at the last meeting where Mr. Raymond made a statement but I read the transcript, and

apparently his criticism of the Commission was that we were discussing and fondling and feeling and everything, but we weren't responding to any questions, and I understand that the Chairman has put forth some questions, some of which are pretty radical changes, Commission meeting at night, fee schedule changes, some of which aren't, research groups and things like that, and as I understood it from what I heard the opposition of Mr. Beckman and Mr. Arnold, that these don't represent, that these represent an agenda. The reason that I called it to the floor is that I think that's a procedural way to go, to have an agenda, is to put the matters before this Commission and discuss them or take testimony or do something. Maybe I underreacted to it, or maybe I am not recognizing it, but to me if it's an agenda like the one we've had in the past, we're supposed to say these are some areas that we're going to deal with that are concrete proposals, and respond to them. If we as a Commission like them we vote in favor of them; if we don't like them, we don't vote for them and we want more time on them, or whatever. That's the way I understood it. I have not seen that report either.

MR. ARNOLD: Mr. Harlan, let me say this to you, sir. If that's what the Chairman of this Commission wanted to do, all he had to do was enumerate five separate items that he wanted to discuss, advise the members of this committee in advance in order that everyone should be prepared to discuss it. Instead he goes into a long harangue that's taken three quarters of an hour, embarrassing me personally as an attorney representing claimants through the Workmen's Compensation Commission, and from time to

time employers insured. He's embarrassed members of the medical profession, as I see it, and as Chairman of this committee it seems he should, and the Commission as well, it seems to me as Chairman of this Commission he should take an unbiased view toward these items and these parties in this entire matter. I resent what you said, Doctor, and I consider you to be a friend of mine, frankly, and I am surprised and I am very, very injured, hurt, whatever you want to say, personally, that you would embark upon such an attack on members of my profession, and I resent it.

DR. LAMONE: Mr. Chairman.

MR. CHAIRMAN: Dr. Lamone.

DR. LAMONE: As the first chairman of this newly reorganized Commission, I would like to say that all of the items raised in this report do indeed reflect the reports that we've had before this Commission over a number of years. Now, perhaps the new members, having just come on the Commission in the past year, may not recall or be able to link to all of the things represented in this Chairman's report, but I'm saying that all of these items in one form or another were very much a part of the base and knowledge that this Commission has accumulated over the past four years. I don't, I would hope that nobody would accept any of these comments in the Chairman's report as a personal attack upon the legal profession or the medical profession.

It's been well observed nationally, as well as in the discussions of this Commission over the four years, that there are a number of constituencies involved in workmen's compensation, each representing and contributing to the cost of

the entire workmen's compensation system. So that there is not only national concern, but state concern, not only Maryland's, but a number of other states that have discussed issues concerning attorney involvement, concerning the cost of medical practice as it relates to workmen's compensation commissions, so there's nothing personal about these at all. These are just simply issues that I think are important for us as professionals to openly discuss, hit 'em head on, and see where they come out.

MR.(?): Mr. Chairman.

MR. CHAIRMAN: Let me just add, Mr. Arnold, I have no animus or ill regard for your own professional esteem and for others who serve on this Commission, with whom I can only say that I have the highest respect for, and no affront to you personally or any other member of this group, is intended in anything that I've said.

MR. BECKMAN: Mr. Chairman.

MR. CHAIRMAN: Mr. Beckman.

MR. BECKMAN: Of what I've heard very briefly from Dr. Lamone and from you -- to me it appears just to be attempt at justification to rationalize and justify what I feel -- from the first time I've ever seen it from you, what I consider to be some highhanded conduct, and I'm really surprised and shocked by it. I didn't expect it from you. At this point, I would ask Mr. Harlan to withdraw his motion. I think for the benefit of this entire panel, this matter should be discussed further, but that no vote should be taken at this time, until we can go over your report and either get a consensus of this group as to whether

it's the opinion of this Commission, and should go down to the Governor that way, or whether it should be changed, modified, or whether certain of us are going to be required to write, for want of a better word, a dissenting opinion.

MR. CHAIRMAN: Mr. Beckman, my understanding of Mr. Harlan's motion is that we move to bring this to the floor for discussion. Is that correct?

MR. HARLAN: Maybe I am missing the point. I too am an attorney too, and maybe I should have been affronted but I didn't read it that way. I know Dr. Abramson....

MR. ARNOLD: It wasn't directed against you, it was directed against claimant's attorneys, didn't you hear him?

MR. HARLAN: I have claimant's cases over at the Commission.

MR. ARNOLD: Damn few, come on.

MR. HARLAN: And I have more than you....

MR. ARNOLD: Come on....

MR. HARLAN: Let me finish, I think this is getting elevated. I didn't perceive anything here that we hadn't heard of. I have not seen that either. That comes as -- the recommendations, although frankly, I guess, we've -- I've been on this thing three years, I guess, and have heard most of these issues. I understood when the things are put like that, and obviously there are a lot of variance of opinion, I have a lot of opinion, I don't agree with a lot of these things either, I'll be very frank about it. Again, I'm not trying to apologize for the motion. I thought the correct way to deal with these things is

if we put it on the floor and we discuss it. And if we need more time, we go to that, and then it's agenda. I don't know what happens if we withdraw the motion. We don't have anything then, do we?

MR. ARNOLD: No, you can table the motion and the proper thing to do would be to disseminate copies of that report to each and every member of this committee so they can intelligently study it and at the next meeting we can discuss it. That's what should be done, and we know that's what should be done. There's no question that that should be done. A report took him a half an hour to read, he wants to vote on in two minutes, when no one's ever seen it. And it's a radical attack on our entire system as we know it today. I'm telling you he's stating things in that report that he says were on the agenda of this Commission before. Show me when, since I've been on this Commission since February nineteen hundred and eighty four, when we've discussed attorney's fees to be modeled after some Illinois statute I've never even heard of. When did we discuss that? I ask you to tell me specifically when we discussed it. Anybody on this Committee tell me that?

MR. CHAIRMAN: Dr. Lamone.

DR. LAMONE: We did not discuss the Illinois report.

MR. ARNOLD: Exactly. But he's....

DR. LAMONE: We discussed attorney involvement and the role that attorney involvement plays in the cost of workmen's compensation system, going back to the first year of this newly organized Commission.

MR. ARNOLD: All right, but he wants to -- go ahead.

MR. BECKMAN: I think you have to be very naive not to see this as an approach to take effective legal representation away from claimants one way or another, by making it difficult for lawyers to attend hearings, by making them at night, or by having lawyers' fees cut so they won't be interested in coming to the Commission to represent somebody, or by any number of other factors which would benefit persons other than claimants in this matter, so that they could maybe keep some of their premiums in profits. It's geared to that, this entire list of agenda things is geared that way.

MR. ARNOLD: Maybe we ought to do away with doctors, too, and then we won't have any problems paying them.

MR. CHAIRMAN: Gentlemen, I'd like to point out to you that you are both discussing the merits of the issue and are giving explicit credence to Mr. Harlan's motion that this be put before us today for discussion, and you are doing so. Therefore, since the discussion on the motion seems to have ended, I'll call the motion, which is that -- Mr. Harlan's motion, there was a second.

MR. ARNOLD: You've ended it.

MR. (?): You're ending discussion? Are you ending discussion on this motion?

MR. CHAIRMAN: Is there further discussion....

MR. ARNOLD: Absolutely.

MR. CHAIRMAN: ... on Mr. Harlan's specific motion to bring it before this Commission?

MR. ARNOLD: It is untimely and we are trying to tell you why it is untimely.

MR. CHAIRMAN: Mr. Arnold, you have made the point, and repeating it again does not develop any further argument.

MR. ARNOLD: Okay.

DR. LAMONE: I would just like to reemphasize that I take the motion to mean we are setting before this Commission a set of agenda items to guide us here in the next few meetings, where each one of these issues will be discussed.

MR. BECKMAN: Well, I think that I'll accept what you say and I would like, if we're going to have a motion, I think some of these items which are discussed ought to be changed or embellished upon or modified in some way, and I'm not comfortable with it as it sits. And, therefore, I would like to have....

MR. (?) Mr. Beckman, that's the purpose of the discussion. You want something now that you like a hundred percent and then vote on that, or you want the matter discussed?

MR. BECKMAN: That's not what I'm saying.

MR. (?) Well why don't we discuss it...the entire question?

MR. CHAIRMAN: Since there is no further discussion on the specific motion which Mr. Harlan has made, the motion is in order.

MR. ARNOLD: Let me ask you one more question. Are these recommendations which you are making in this report, items that you feel that this committee, Commission should study in the forthcoming year, 1986, and not adopt at any type of meeting



today?

MR. CHAIRMAN: Mr. Arnold, Mr. Harlan's motion is that the five recommendations which I have put forth, representing the history of this Commission and the history of other discussions on worker's compensation, such as the report in front of you, that his motion is those five items be put today, now, for discussion and for resolution by this Commission. That is the motion.

MR. ARNOLD: When?

MR. CHAIRMAN: Today. That is the motion put before you, that those five items be discussed today, for disposition today, in whatever form the Commission sees fit. That is the motion on the specific motion to hear the five recommendations. Not on the merits of the recommendations, but on the motion to hear them. Those in favor ....

MS. VINCENT: Mr. Chairman.

MR. CHAIRMAN: Yes, Ms. Vincent.

MS. VINCENT: I think it might be a two-fold problem here. One is that you're asking the Commission to accept your conclusions as contained in your report, and I think each one of us have taken exception to one or all of them. So it's difficult. I think that somewhere along the line they should do something with your report, adopt it or not. Part of that report are the recommendations. That is to me a separate question.

MR. CHAIRMAN: Are you moving to separate them?

MS. VINCENT: I think we should, separate your report.

MR. CHAIRMAN: That's a motion.

MS. VINCENT: I may be out of order because there is a motion on the floor.

MR. CHAIRMAN: No, it's in order. That's a non-debatable motion which requires the majority. The motion is that the five recommendations and the remainder of the report which deals with the agenda for the future, including the review of Section 36 and so on, be separated. That requires a majority to carry. All those in favor of the motion to separate the report from the recommendations, signify by raising your hand. One, two, three, four -- four in favor. All those opposed to the motion to separate: one, two, three, four. The motion fails.

MR. DEWBERRY: Mr. Chairman, I want it recognized that I abstained. I intend to abstain simply because of lack of historical background and lack, as you well know, this Commission knows, of my ability to participate in the discussions and the public hearings and so forth. So I will be abstaining on all votes.

MR. CHAIRMAN: Thank you Mr. Dewberry. I appreciate that. Okay, so we are back to the main motion. The motion is to consider the five recommendations to be discussed today. Those in favor of that recommendation signify by raising their hand. One, two, three, four. Those opposed? Four. The Chairman votes aye, in accordance with the rules of procedure to break a tie vote. Therefore a five-four vote, the Commission has adopted and

put these on the agenda for today. The floor is open for discussion regarding these five items.

MR. HARLAN: I'd like to speak against the first one on the fee schedule changes.

MR. CHAIRMAN: I would just have to add that you can put them on the agenda for this rough discussion, but absent a motion to adopt or not adopt, we're in effect moving to postpone. If we do not have a motion on the floor against which the discussion takes place, then by default, there is a motion to postpone. You have to speak to a motion, according to the rules.

MR. HARLAN: What does that mean?

MR. CHAIRMAN: There has to be a motion to reject the five, or a motion to adopt the five.

MR. HARLAN: Isn't that what we just did?

MR. CHAIRMAN: No, the motion was simply to put it on the floor. Now we are just going to decide the vote and the next motion would be to reject or adopt.

MR. (?): In toto, or in one by one?

MR. CHAIRMAN: Whoever makes the motion, makes the motion.

MR. HARLAN: What's the procedure after that, discussion on each one?

MR. CHAIRMAN: Discussion on the motion as it's given.

MR. HARLAN: Well, I don't know if this is in order, I don't know how we would approach this, because I think they'd have to be specific, or amended, or whatever.

MR. ARNOLD: Mr. Chairman, do you have any idea where you are with this? Because I don't know where we are. Frankly, that may sound a little stupid, but I just simply don't know what you're trying to accomplish in a one hour or two hour meeting this afternoon, on items of this importance. It simply is irrational, it's illogical, illfathomed, anything else I can tell you, to put items of this importance and try to jam it through at a meeting today. I take strong exception to it and let that show on the record in bold capital letters.

MR. CHAIRMAN: I hear your strong exception and I would point out, Mr. Arnold, that nothing that you heard the Chairman say is new information to you or anyone else in this Commission, and that it is not necessary to reinvent the wheel in every meeting.

MR. ARNOLD: Well I am reinventing it, because you're wrong.

MR. CHAIRMAN: In the absence of a motion to either adopt the five, or to reject the five, the five elements are thereby tabled. And that will be the ruling of the chair, that it is tabled -- indefinitely.

MR. CHAIRMAN: We will now move on to the issue of wages vs. hours. There are people who have identified themselves to testify. So that we can speed this along, I'm just going to go down through the list and verify who is here and who is not. Mr. Wharton, Ms. Porter, Mr. Czech, Mr. Popham, Mr. Higgins, Mr. Epstein, Mr. Klaus, Mr. Rankin is here, Mr. Smith. Okay.

(Pause)

MR. CHAIRMAN: Ms. Vincent is going to introduce the specifics on the clarification of the language of hours vs. wages. We will hear from the ABC's first, then Ms. Porter, Grover Czech and Bryson Popham, unless there is a problem with that order and you all have worked out a different order. That's up to you. Yes?

MS. PORTER: Mr. Chairman, I'm JoAnn Porter with NCCI. At least from my perspective, I think in the order, that the American Insurance Association should go first, since they are the insurance industry spokespersons, representing insurance companies. I am the technical people. I can't speak for the ABC members. That's up to them, in what order they wish to go.

MR. CHAIRMAN: It was a suggestion. Mr. Czech, Mr. Popham, yourself, and the ABC? Is that the suggested order you're going to follow?

MR. CZECH: First myself and then JoAnn.

MR. CHAIRMAN: Okay. There's a limitation on time. I am going to ask that you hold your comments to fifteen minutes maximum. If you can be shorter, that would be appreciated. That will include some time for questioning. Mr. Wharton, Mr. Higgins, Mr. Epstein will share the fifteen minutes. Mr. Rankin, we will give you, obviously, more latitude, because two of the people who were supposed to testify with you are not here. So, we really have to be able to allow you to develop, open a thesis if you need time. So we can be more generous. Try to limit your remarks, as I say, so that we can leave here before the snow

requires we stay over night.

MR. BECKMAN: Mr. Chairman.

MR. CHAIRMAN: Mr. Beckman.

MR. BECKMAN: Do you intend to have a vote on this issue today?

MR. CHAIRMAN: It is my understanding from our last meeting that the motion which was accepted by the Commission, not unanimously, but that's not relevant, is that we not only have a hearing today, but that we decide the issue today. Mr. Raymond made that motion and it was adopted.

MR. BECKMAN: The reason I asked is that I would like to vote on the issue if I hear the testimony, but I have to leave in a period of time, and I probably won't be here when the vote is taken, because of the time that was taken up with the other issues, and would you like me to leave a proxy before I go?

MR. HARLAN: Let me respond to that, too. I feel very much the same way we did on this other thing that came up. If we are having a meeting in two weeks, unless it's life and death, I'd just as soon hear all the testimony. There are a lot of people sitting out there today, the snow is coming down. I'd like to hear this issue out. This is an issue that is very important to everybody, there's a lot of people here and we try to keep these meetings a certain time limitation and I know you have other things, I have other things.

MR. BECKMAN: I didn't think it was going to take all this time.

MR. HARLAN: Unless Mr. Raymond has a horrible

objection, I'd like to see us get the testimony. I don't want to postpone it forever either. I mean, we can't evade it. But I certainly would like to see it come up on the next meeting, if we're only talking about two weeks. I can't see how we're going to hear all this testimony. It's twenty after three now, and to intelligently discuss it. Mr. Chairman, I move that we wait until the next session to hear it all.

MR. CHAIRMAN: Mr. Raymond was the author of the suggestion and the successful vote that we hear this and vote on it today. Mr. Raymond, the request is, at least by Mr. Beckman, that we consider an alternative to voting it today. What is your sentiment on that?

MR. BECKMAN: I move that we carry it over to the next meeting.

MR. RAYMOND: I have no objection.

MR. CHAIRMAN: Second?

MR. HARLAN: I second it.

MR. CHAIRMAN: The motion is that in the event we cannot resolve the discussion today, and vote on it today, that the first order of business at the next meeting will be the completion of discussion and the vote on wage and hour. That's moved, that's a change in the previous motion. All in favour? Opposed? There are no opposed. We will adopt that rule. In that case, we can proceed. Thank you, Mr. Beckman, for pointing that out.

Okay, so the first person we are going to hear from is Mr. Czech. The one thing we're going to do is, I think, Mark, you are leaning on what might be the only table left for people to.... Is there a way some people can put that up here? I do hope that everybody here in the audience has signed in on the sheet, indicating your presence. Okay, Mr. Czech. Ms. Vincent, I apologize.

MS. VINCENT: In order to follow the same format that we followed on other issues, the Chairman and I discussed it and decided that I would present the issue as we have discussed it in the legislative subcommittee. I'll put our suggestion in the form of a motion, and then everyone can react from there.

I am going to start with, and be very brief, but very basically, explain to the Commission members, if they don't already know, and I am not sure everybody does, the way premiums are presently determined. I think beyond that, everybody can expound beyond that, and clarify it and make remarks, but as I best understand it, it is a combination of premiums -- the premium structure is a combination of several things. One is the manual rate, and that's the -- reflects the classification which is the uniform coding of employees performing similar jobs. These codes are the same in Maryland as they are in Michigan, or rather, with a few deviations. That manual rate is reflected in terms of hundred dollars per payroll.

Payroll is the second ingredient in determining the premium structure. So it's the manual rate times -- per hundred dollars of payroll. That figure is then modified by an



experience number -- experience modifier, and that is a plus or minus percent of the premium, which is applied to the employer's premium to reflect his experience, and his experience means the number of claims filed and the frequency of claims filed.

I have a handout and I'll show you just at the top, Part A -- I tried to make it as brief as I could make it -- JoAnn, I am sure you could do a fancier job, but I tried to be very basic because I think we all get lost in the detail. So if you look at the top of this handout -- sure, anybody who wants one -- it's just a real basic, rudimentary approach to explain a piece payroll other than premiums.

At the very top, Part A, you will see classifications. There are six classifications. These classifications of iron workers, construction workers, in column one. In column two is what the rate is per hundred dollars of payroll. I think everybody can follow that. The problem as this Commission over the years has identified, and that we tried to address in the legislative subcommittee, is that while the manual rate is even, and probably an equitable part of the premium structure, when it's multiplied times the payroll, inequity then occurs. And if you'll look at Part B, you will see what I mean.

Employer A has a payroll 50 men times \$400 a week, and his payroll is then \$20,000 per week. Now suppose he is an iron worker working over two stories. Okay. Right beneath that in line 2, under Employer A, you will see that \$37.43 times twenty cents per \$1000, that's his payroll, equals a premium of \$7,486. Employer B, he has 50 men, but he is paying his men \$700

a week. His payroll is then \$35,000 a week. The \$35,000 times the manual rate, \$37.43, equals a premium of \$13,000, the same job classification, but different payrolls, so that the equity then becomes quite prominent.

Several solutions have been proposed, and one even implemented, that attempt to address the problem. The insurance industry, recognizing that there was a problem there, and responding to the concerns brought to them, implemented, and I won't even attempt to explain it all, I am sure JoAnn will explain it, the Loss Ratio Adjustment Program, which is known as LRAP, and the legislators tend to mix up those letters all the time and come back with words that don't sound anything like LRAP, but that's what it is, and as I understand it, is a series of additional discounts given on the premiums and so forth. It was implemented July 1, 1985, so that the results of that are really unknown. We don't know how effective that program has been or will be. The concern raised by the people most interested in this issue, is that a discount applied to a \$20,000 payroll, and the same discount applied to a \$35,000 payroll, still leaves an inequity.

The second solution that has been proposed is the historic one, and that is to change the whole basis of premiums from a percentage of the payroll to hours worked. The insurance industry has raised a number of concerns about that, talking about verifiability of it and the problem with administratively switching to a new system, and so forth, and I am sure the insurance people will detail that better, too. But, that still

reflects the change to hours worked, still reflects another proposal.

In the legislative subcommittee, we explored an idea that was put forth by the Florida Labor Management Committee, and what their suggestion was, according to a study done by a consultant in Florida, The Future Cost Analysis, I believe is the name of the company, their proposal was to index premiums to payroll, I mean index -- limit the premium to a percentage of the payroll. In other words, leave it tied to payroll, but make it -- but cap it, in other words, just as unemployment insurance is now. For instance, and the way we suggest in the legislative subcommittee, that it be tied to 1.5 times the maximum temporary total benefits.

If you look at the bottom, Part C, the compromise is to continue to base premiums on payroll but limit the contractor's premiums to 1.5 times the maximum weekly temporary total benefit, per man, per week employed. The example of how it will work, as cited there, Employer A pays the employee \$300 a week. His premium would be based on the manual rate, and again I use the example of \$37.43. The manual rate times the man's \$300 a week, plus or minus the experience. Under that formula, he would be paying \$112.29 in premiums.

Employer B pays his people \$490.50 per week. The premium would be based on the manual rate times \$490.50 per week, plus or minus the experience. His premium would be \$183.59.

Employer C pays his employee \$700 a week and he, too, would be capped at 1.5 times the maximum "TP" amount, which in

1985 was \$327.00, and if you multiply it out, 1.5 times \$327.00 equals \$490.50, so that Employer C, even though he pays his men, his workers in excess of the \$490, he would only be paying on the \$490 figure. The premise is, because an employer pays his worker more in wages, the workers do not qualify for any more in benefits, so therefore their premium ought to be tied to the rate of benefits.

I know this is confusing, but I would move that the full Commission consider this compromise favorably, and so recommend to the Governor.

MR. CHAIRMAN: Thank you very much, so moved.

MR. RAYMOND: I second it.

MR. CHAIRMAN: There's a motion and second, with regard to your testimony, regarding the motion.

We will begin with Mr. Czech. Mr. Czech, since it's 3:29 p.m., two 15-minute segments will put us precisely at 4:00 p.m. Is there anyone here who's going to testify -- this is just in the event that the members of the Commission could not stay beyond 4:00 p.m., who could not postpone their testimony until two weeks from Monday? I know this is a terrible inconvenience for you to appear twice, but it hopefully won't snow then. Is there anyone who would be here today who will be unable to be here on February 10th?

UNIDENTIFIED VOICE: All of us will be attending the National Convention of ABC in California. We will not be able to be here.

MR. CHAIRMAN: Okay, in that case, why don't we -- JoAnn, will you....

MS. PORTER: I will be here in two weeks.

MR. CHAIRMAN: Okay, why don't we start with their testimony, Grover, only because they are not going to be here.

MR. CZECH: That's fine with me.

MR. CHAIRMAN: Okay, why don't we start with the ABC's.

(Pause)

MR. CHAIRMAN: All right, let's go. All right, come to order. You are Mr. Wharton, and you are ....

MR. GARRETT: I am Mr. Garrett.

MR. WHARTON: Joel Garrett, he is replacing Mr. Epstein.

MR. CHAIRMAN: Oh, Joel Garrett, okay, and you're Mr. Higgins. Okay, you understand you have fifteen minutes to divide among you.

MR. WHARTON: Mr. Chairman, my name is John Wharton. I am a CPA by training. I am Vice President of Finance of Miller & Long Company, Inc., a contractor based in Bethesda, Maryland. I am here, also, representing Associated Builders and Contractors. I am the National Chairman of the Worker's Compensation Committee for the Association. ABC is a trade association based in Washington, D.C., with local chapters throughout the country, of merit shop contractors.

We have appeared before the Senate and House Committees in Maryland for the past several years on this issue. It has been brought up each year for the past several years. We are

unalterably opposed to a switch from the payroll method of determining premiums, since the original method is the method that everyone understands.

An hours worked method would be -- has many drawbacks. As an old CPA and auditor, the one that immediately comes to mind would be the problem of auditing the numbers. When you go in to look at payroll, it's very easy to verify. You can check it against the government 940's and it's very easy to come up with. In our industry, many, many of our workers earn salaries based not on hours worked, but on production, pieces of material put in place, of quality of construction, quality bonuses, so forth, so that hours worked is not a good measure of total payroll for many in our industry.

A modification of the payroll to come up with a cap, as Ms. Vincent has suggested, is only partially better than an hours worked basis. If we modify the system as it now stands, to eliminate part of the wages that would be applied, then that means that there will be less wages in the total Maryland pool from which to draw the premium, and since the premium, in a broad sense, is the basis on which claims are paid, and expenses of the insurance company are met, if that pool is reduced, then that premium will have to be raised. And the only way to raise it, obviously, is to raise the rates, and where that would lead, it's hard to tell at this point.

The insurance company, over the past several years of looking at this program, has come up with a proposed solution, the LRAP Program, which was introduced in July of last year and

has only been in operation for six months now. I think that it would be far better to stand back, see where that takes us, what the results are, and then see if that does not solve the perceived problems that Ms. Vincent sees in the existing system.

I, myself, believe that the system works very well. The use of experience modifiers applied to each employer, if, as she suggests, that the hour-wage employer has less accidents and is less costly, then on the basis of the amount of premium that goes into the total pool, then his experience ratio is going to come down and that experience ratio then will give him a lower premium in the future. For that reason, I do not believe that the switch from the existing system is necessary or even desirable.

MR. GARRETT: Mr. Chairman and Committee Members. I addressed this same group back in October in Silver Spring. I appreciate the opportunity to be here again. Just to give you some background, I am Vice President of the Thomas P. Harkins Company in Silver Spring. We are a Maryland employer. We have about 250 people working for us. Of course a lot of our work is here in the State of Maryland.

We are also opposed to the change in this system as it's currently devised. I also feel that we have a situation whereby it could be very, very hard to audit on an hourly basis. I agree with John in terms of -- there's many, many controls that go into effect when you're working off of payroll dollars. There are reports which are filed with the government,

the 941 reports and you're tied into W-2's and that type of thing.

I can tell you how much we pay in terms of dollars in a year's time, but I would be hard pressed to say how many hours our people worked. It's just not a normal recordkeeping function that's performed in our regular industry in terms of the totals. I believe that the insurance company would also have a problem relating to that, and being able to audit those numbers.

John mentioned the fact that whenever you start involving yourself with changing rate, the basic premise is that you're still only dealing with so much money. If some rates are lower, some rates are going to have to be raised in other areas. We don't know where that would be, and I'm certainly not here to say I'm smart enough to figure it out. But we've only got so many dollars in the pot, and those dollars are going to be expended. So, for that, we are opposed to changing the system. We would like to see it stay the way it is. Thank you.

MR. HIGGINS: Members of the Commission, would you excuse me for my cold. My name is Gene Higgins. I am the President of Joseph J. Hock, Inc. We are the largest employer of union construction truck drivers in the State of Maryland. I am speaking both for my company and for ABC of Maryland, which is comprised of more than 1,000 construction firms across the State.

When I initially saw this on the Commission agenda, I was a little surprised, because I was surprised the Commission was addressing this subject of premiums. But since we are, the questions that I have, why is it only the construction industry



that's involved in this? If it's a good program, it's a good program. It's not a good program, but why is the construction industry the only industry involved? Why not all of industry across the State?

As a company employing approximately 135 union drivers, we made a business decision on how we intend to operate our business. We have considered all the cost factors involved in it, and if those cost factors would ever become prohibitive, we would then make a decision as to how we are going to operate the company. That's our decision as a business decision. We neither need nor want protection from our competition, by virtue of a program that attempts to equalize any cost of doing business by government fiat. That should be out in the marketplace where it belongs.

It is my understanding that there had been a few historical cases of states going this direction, hours worked, which had virtually bankrupted their funds and forced them to go back into a premium rate increase, in order to make that fund whole again. We have enough problems in Maryland with businesses being (unintelligible) in Maryland, not to face that problem here.

The payroll system, I believe is the best system because it allows for premium stability. An employer may make the decision annually, semi-annually, every two years, periodically make the decision on what his payroll is going to be, what his wage rates are going to be. He can make that

decision knowing exactly how the system is going to work, because there is history behind it and there is historical precedent.

If you couple the premium development, along with the experience modifications, premium discounts, rate deviations, all of these things that a firm can get involved in, in conducting its business and negotiating its insurance package, then every company can make their own decision on a business basis, how they intend to operate. As to the compromise, I pointed this out to somebody the other day and I've seen a piece of legislation that's in to accomplish this, it came back with an analysis, to me, and said it's merely a question of whether you cut your jugular or cut your wrist. The result is the same. That's all I have to say, thank you.

MR. CHAIRMAN: Thank you. We have five minutes left, in the event there are any questions from any member of the Commission.

MR. ARNOLD: One question.

MR. CHAIRMAN: Mr. Arnold.

MR. ARNOLD: I don't know which of the gentlemen, I think it is the gentlemen from Harkins, what is your name, sir?

MR. GARRETT: Joel Garrett.

MR. ARNOLD: Mr. Garrett, I'm sorry. You said that you have difficulty determining the number of work hours put in by your various employees. Do you bid most of your work?

MR. GARRETT: No, we don't. We negotiate.

MR. ARNOLD: You don't do any bid work at all?

MR. GARRETT: Hardly ever. Maybe 5% of our work is bid

work. The rest is negotiated by (unintelligible).

MR. CHAIRMAN: Thank you. Any other questions? Thank you very much gentlemen, we appreciate your coming. Grover, I'm about to call you, but just one more time, I want to ask, is there anyone else here who will not be able to be here in the alternative, two weeks Monday, in Annapolis? Thank you.

Mr. Czech, yes?

MR. CZECH: I was going to suggest, Mr. Chairman, that in order to get continuity between myself and the other insurance witnesses, that we would all be willing to come back in two weeks. In view of the snow and the time, you might want to do that.

MR. CHAIRMAN: I think that makes sense. There's no reason not to. All right.

MR. MACNAB: I make a motion for adjournment.

MR. CHAIRMAN: So moved, motion for adjournment.

MR. RAYMOND: Second.

MR. CHAIRMAN: All in favor say "aye", opposed "nay."

(Whereupon, the hearing  
concluded.)

STATE OF MARYLAND

BALTIMORE CITY,

I, Minnie L. Godsey, a Notary Public, do hereby certify that the foregoing transcript is a true and accurate record of the proceedings indicated.

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Notary Public